IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No.784 of 2008.

Date of decision: 8.8.2008.

Jeet Ram ……. **Petitioner**

Vs.

State of H.P. …. **Respondent.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Petitioner : **Mr. T.S. Chauhan, Advocate.**

For the Respondent : **Mr. Ansul Bansal, Additional Advocate General.**

Kuldip Singh, Judge. **(Oral)**

The petitioner has filed the present application under Section 439 Cr.P.C. for releasing him on bail in FIR No. 244 registered on 24.12.2007 at Police Station, Barmana under Sections 20, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short Act) . The respondent has filed status report.

2. Heard and perusal the record. The prosecution case in brief is that on 24.12.2007 at about 4.30 PM at place Delag Galla on NH-88 500 grams contraband was recovered from the envelope which the petitioner was carrying and another 500 grams of contraband was recovered from the bag which co-accused Karam Dass was carrying. Both sets of contrabands were taken

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Whether the reporters of the local papers may be allowed to see the Judgment?

into possession, sampling, sealing was done, both the accused were arrested and FIR was registered. After receiving the report of the Chemical Examiner and completion of investigation, challan has been presented and now the case is fixed on 12.9.2008 in the Court of learned Special Judge, Bilaspur. It has been submitted that earlier petitioner was tried in FIR No.330 registered on 22.8.2006 at Police Station, Sundernagar under Section 20 of the Act, FIR No.74 was also registered on 20.6.2006 against petitioner at Police Station, Darlaghat under Section 61(1)(14) of the Punjab Excise Act as applicable to the State of Himachal Pradesh. In the earlier case under Section 20 of the Act, the petitioner was acquitted and the excise case was compounded.

3. The learned Addl. Advocate General has submitted that the earlier bail applications filed by the petitioner were rejected and in these circumstances he has opposed the present bail application. He has submitted that petitioner is not entitled to bail.

4. The learned counsel for the petitioner has submitted that petitioner has been falsely implicated in the case. He has further submitted that the allegation against the petitioner is that 500 grams of contraband was recovered from him. The chemical examiner in his report has found resin content in the contrabands to the tune of 35.50% w.w and 35.91% w.w. in the samples which were allegedly taken from the bulk quantities recovered from the petitioner and co-accused Karam Dass. In view of the resin content, the actual quantity of charas in the contraband allegedly recovered from the petitioner comes to less then 200 grams. He has submitted that co-accused Karam Dass has already been

released on bail. In the order dated 7.3.2008 of this Court, the report of chemical examiner was not considered. The additional circumstance against the petitioner is that he is having past history of criminal cases, but both the cases have already been decided, in one case the petitioner has been acquitted and the second case was compounded. The bar of Section 37 of the Act is not applicable. The petitioner is in custody since 24.12.2007. The trial is fixed on 12.9.2008 and it is not possible to assess how much time more the trial will take. Therefore, keeping in view the facts and circumstances of the case, the petitioner has made out a case for releasing him on bail. Accordingly application is allowed. The petitioner is ordered to be released on bail in FIR No. 244 registered on 24.12.2007 at Police Station, Barmana under Sections 20,29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 subject to his furnishing personal bond in the sum of Rs.25,000/- with one surety of the like amount to the satisfaction of learned Special Judge, Bilaspur with the condition that petitioner shall not tamper with the prosecution evidence in any manner.

5. The observations made in the order shall not be construed as expression of opinion on the merit of the case.

Copy Dasti on usual terms

(Kuldip Singh)
Judge

August 8, 2008
(sks)